April 29, 2002

Docket Management System
Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Docket No. FAA-2002-11301

Dear Ladies and Gentlemen:

Pursuant to section 11.47 of the Federal Aviation Regulations (FARs), (14 CFR section 11.47) the undersigned entities hereby request a 90-day extension of the comment period in the above matter to August 27, 2002.

For the reasons described below, we believe this request is supported by good cause and is in the public interest.

Background

On February 28, 2002, the Federal Aviation Administration (FAA) published in the Federal Register (67 F.R. 9366) a Notice of Proposed Rulemaking (NPRM) to clarify the language of the FAA's anti-drug and alcohol misuse prevention rules (drug and alcohol rules), increase consistency in those regulations and revise certain requirements. Among the issues addressed in the NPRM is the application of the drug and alcohol rules to maintenance subcontractors generally and to non-certificated maintenance subcontractors in particular.

We commend the FAA for providing the public with an opportunity to comment on this significant change in the regulations. However, the undersigned entities have serious reservations about this proposal because it is based on a fundamental misunderstanding of the maintenance industry's use of subcontractors. In addition, it did not adequately consider the costs and benefits as required by Executive Order 12866 or the impact on small entities under the Regulatory Flexibility Act of 1980.

Specifically, the NPRM proposed two significant changes to the regulations affecting maintenance subcontractors. First, it would cover employees **"at any tier"** of the maintenance process, without limitation and no matter how far removed from the contractual relationship between the air carrier and its direct maintenance provider. Second, the FAA is proposing to reverse its longstanding exception that the drug and alcohol rules only apply to those entities that take airworthiness responsibility for the work they perform under the FARs.

In the preamble, the FAA inaccurately described a so-called "pervasive system of drug and alcohol testing in the maintenance side of commercial aviation." Therefore, it

completely ignored the fact that there are numerous non-certificated maintenance subcontractors that have never been included in a drug and alcohol program. Indeed, these entities have never been eligible under the FAA's own rules to submit a program of their own. **This is a significant change in the rules, particularly for these non-certificated entities.**

Reasons in Support of the Request for Extension

The Aeronautical Repair Station Association (ARSA) and the Aerospace Industries Association (AIA) are currently surveying industry practices to assess the safety, financial and practical impact of these proposals. The Associations developed a survey to obtain this information (see attachment) and the industry is responding. Among other things, we are trying to ascertain the number of domestic non-certificated maintenance contractors, particularly those entities that support the aviation industry without actually being part of it. Unfortunately, the amount of time provided by the NPRM was insufficient to obtain and analyze the needed information.

For example, we have learned that the Sony Corporation (Sony) is a non-certificated maintenance subcontractor for in-flight entertainment systems that are installed under Parts 43 and 145 by a certificated repair station. According to the NPRM, employees of this company who perform "maintenance" in the United States will have to be tested for drug and alcohol compliance even though Sony is not required to hold a repair station certificate and cannot take airworthiness responsibility for the work it performs. Another example of a non-certificated maintenance subcontractor is a local dry cleaner that cleans airplane seats in accordance with a component maintenance manual (CMM) as directed by a certificated repair station.

Additionally, we are trying to determine the number of non-certificated suppliers of parts that are fabricated for use under a repair station's quality system in accordance with FAA-approved or acceptable design data. There is no mention of these suppliers in the preamble. However, the fabrication of parts under Part 43 may be considered maintenance because these items are ultimately consumed in a repair. Therefore, we are attempting to determine the number of entities that support the industry in this manner.

The undersigned entities believe that this proposal, if adopted, would result in the coverage under the drug and alcohol rules of **every** certificated repair station. This is because some repair stations have no idea that they are performing work on air carrier equipment. Although their customer (the tier immediately above them) provides the maintenance instructions to their subcontractor, the lower tier provider may not have been informed that an air carrier owned the equipment on which they were working. Often, such repair stations are several tiers removed from the primary repair station that does have a direct contract with the air carrier.

The undersigned entities are currently attempting to determine the cost impact on the industry and its impact on small entities because the FAA failed to do so. We believe that thousands of additional employees will have to be included in a drug and alcohol program and that many companies that were not even considered by the FAA in its cost benefit analysis will be affected. In assessing the proposal's impact on small entities, the FAA only considered small air carriers and sought additional information from "small entity" repair stations. It ignored the fact that many small maintenance subcontractors do not hold FAA certificates. The potential costs to these entities will be substantial, assuming they choose to continue to support the aviation industry by agreeing to be included in a drug and alcohol program.

In that regard, the FAA did not address the potential impact of having small entities leave the aviation business entirely. If these shops decide that the amount of aviation work they perform does not warrant the establishment of a drug and alcohol program and the regulatory oversight that would entail, will this work be sent outside the U.S. where the FAA's rules do not apply? The NPRM ignored this issue entirely.

Air carriers and repair stations must also determine the cost impact of overseeing their own subcontractors as well as those further down in the maintenance process with which they have no direct relationship. Under the NPRM, air carriers and repair stations with drug and alcohol operations specifications would be responsible for the compliance of **all** downstream maintenance subcontractors. Accordingly, the certificated entities will have to audit all subcontractor facilities whether they have a contract with them or not. The FAA did not consider this additional cost of compliance in evaluating the costs of this proposal.

Under the NPRM, many manufacturing employees would also be included in the FAA's drug and alcohol testing program if they perform a subcontracted maintenance function at the request of a certificated repair station. Many manufacturers do not know in advance which production people might be called upon to assist in the maintenance process. Therefore, the undersigned entities must determine the number of additional manufacturing workers that will have to be included in the drug and alcohol program. We believe thousands of additional persons who work in a manufacturing facility will have to be covered if this proposal is adopted.

<u>Other Issues</u>

We are very concerned by some of the FAA's statements in the preamble that mischaracterized both agency policy and industry practices regarding drug and alcohol testing of maintenance subcontractors. For example, although the FAA has consistently interpreted the phrase "by contract" to include those situations where there is **no contract** between the air carrier and a maintenance subcontractor, this interpretation

has never been applied to non-certificated maintenance contractors. We do not believe this is consistent with the goal of writing regulations in "plain language."

We are also troubled by the FAA's statement that by ceasing to reference an exception that it consistently articulated in writing for nearly 10 years constituted a change in its interpretation. The record establishes that the FAA made no attempt to inform the public of its reversal of the non-certificated maintenance subcontractor exception until this proposal was issued. While we commend the FAA for realizing that notice and comment were required under the Administrative Procedure Act before this longstanding policy could be changed, we are disappointed at the agency's attempt to minimize the ramifications. Indeed, the agency's summary of the proposed rule gives no indication that its "clarification" will impact additional certificated and non-certificated entities. Therefore, numerous businesses that are directly affected by this proposal must be informed and have an opportunity to comment.

In conclusion, the undersigned entities believe it is critical that the FAA fully understands the safety, cost and practical effects that this proposal will have on the aviation maintenance industry. Because the initial comment period provided an insufficient amount of time to inform non-certificated entities, gather, develop and analyze the necessary data, in spite of the industry's reasonable attempts to do so, we believe there is good cause to grant this request and that it would be in the public interest.

Please let us know if you have any questions or require additional information.

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